

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1606 OF 2007

Bhailal Kunjwarji Gala ... Petitioner

V/s.

Savita Shrikant Yennuwar & Anr. ... Respondents

Mr.Jaiprakash Sawant for Petitioner
Mr.Yongendra Pendse for Respondent

CORAM: SMT.NISHITA MHATRE, J.

DATED: AUGUST 8, 2007

P.C.:

. The petition challenges the award dated 5.5.2005 in Reference (IDA) No.117 of 2004. The petitioner has also challenged the order of the Labour Court dated 5.10.2006 in Miscellaneous Application No.60 of 2005. The award was passed by the Labour Court after notice was issued to the respondent. The Labour Court has recorded the fact that acknowledgements of the notice were received from the Petitioner despite which he chose not to remain present. The Labour Court therefore passed the exparte award.

2. The award was published on 20.7.2005. Thereafter, admittedly, it was received by the petitioner on 14.10.2000. Thus, the petitioner ought to have filed the miscellaneous application for setting aside the exparte award within 30 days from that date

i.e., by 14.11.2005. However, the application has been filed on 31.12.2005.

3. The Labour Court has rightly interpreted Rule 26(2) of the Industrial Disputes (Bombay) Rules and dismissed the application for restoration of the reference. The learned advocate for the petitioner submits that the exparte award was passed without there being any evidence on record indicating that the respondent workman had in fact completed 240 days in service. He places reliance on the judgment of the Supreme Court in the case of *Surendranagar District Panchayat v/s. Dahyabhai Amarsingh*, **2005 II CLR 892**. In para 18, the Supreme Court has observed that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the year prior to his alleged retrenchment.

4. In the present case, after the statement of claim was filed, no dispute was raised by the petitioner, contesting the pleadings in the statement of claim. The respondent workman had filed an affidavit in lieu of the examination in chief which again has gone on record, uncontroverted. In such circumstances, the Labour Court cannot be faulted for accepting the pleadings and the evidence on record of the respondent workman. The judgment of the Supreme Court would apply

in a case where the employer disputes the issue as to whether the workman has completed 240 days in service. Then the onus would lie on the workman to prove this fact. In the present case, since the pleadings and the evidence of the workmen are uncontroverted, the judgment would not be of any avail to the petitioner.

5. Petition rejected.